

AMENDED IN ASSEMBLY APRIL 28, 2004

AMENDED IN ASSEMBLY APRIL 15, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 2742**

**Introduced by Assembly Member Mountjoy**  
(Coauthor: Senator Vasconcellos)

February 20, 2004

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An act to amend Section 2653 of the Penal Code, relating to prisons.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2742, as amended, Mountjoy. Prisons: medical treatment.

Existing law provides that the order of a physician for specified medical treatment may not be modified or canceled by any employee of the department without the approval of the chief medical officer of the institution or the physician in attendance except as specified. A person violating this provision is subject to appropriate disciplinary action by the Department of Corrections or the Youth Authority.

This bill would provide that, ~~for an installation out of full compliance with a specified court order,~~ if an inmate is given a diagnosis and recommendation for treatment by a ~~contract~~ physician *outside the facility who is a specialist or consulting physician*, and that treatment is available at the institution *or contract medical facility*, and that *treatment does not exceed the range of benefits provided by the Medi-Cal program*, no physician may interfere with the delivery of that treatment, except as specified. This bill would also bar prison staff other than a physician from interfering with the delivery of a treatment prescribed by a physician. A person violating any of these provisions

would be subject to appropriate disciplinary action by the department, and is guilty of an infraction punishable by a fine of up to \$1,000. A 2nd or subsequent conviction for this offense would be ~~a misdemeanor punishable by a fine of up to \$2,000~~. This bill would also require any action taken against a physician under these provisions to be reported by the employing department to the Medical Board of California within 30 days of that action.

By defining a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2653 of the Penal Code is amended to  
2 read:

3 2653. (a) If a physician employed by the Department of  
4 Corrections or the Department of the Youth Authority certifies in  
5 writing that a particular medical treatment is required to prevent  
6 a violation of Section 147, 673, 2650, or 2652, or is required to  
7 prevent serious and imminent harm to the health of a prisoner, the  
8 order for that particular medical treatment may not be modified or  
9 canceled by any employee of the department without the approval  
10 of the chief medical officer of the institution or the physician in  
11 attendance unless an inmate or ward has a known history of violent  
12 or otherwise disruptive behavior that requires additional measures  
13 to protect the safety and security of the institution specified in  
14 writing by the warden or superintendent, or unless immediate  
15 security needs require alternate or modified procedures.  
16 Following any necessary modified or alternate security  
17 procedures, treatment of the inmate or ward shall be effected as  
18 expeditiously as possible.

19 Nothing in this section shall be construed to prevent a registered  
20 nurse from questioning, or seeking clarification of, an order from

1 a physician that in the professional judgment of that nurse  
2 endangers patient health or safety, or otherwise is contrary to the  
3 professional ethics of the registered nurse.

4 (b) For any institution ~~that is not in compliance, or is not in~~  
5 ~~transition to becoming compliant, with the provisions of the~~  
6 ~~stipulated order of June 20, 2002, in Plata v. Schwarzenegger (N.~~  
7 ~~Dist., CA) No. C01-1351TEH,~~ if an inmate is given a diagnosis  
8 and recommendation for treatment by a ~~contract physician~~  
9 *physician outside the facility who is a specialist or a consulting*  
10 *physician,* and that treatment is available at the institution *or*  
11 *contract medical facility, and that treatment does not exceed the*  
12 *range of benefits provided by the Medi-Cal program,* no physician  
13 may interfere with the delivery of that treatment unless the facility  
14 physician has performed a good faith examination of the inmate  
15 subsequent to the examination performed by the contract  
16 physician and has determined that there is a medical indication to  
17 alter that treatment. For purposes of compliance with this section,  
18 no examination is required if the modification is limited to  
19 substituting a medication that is on the department formulary for  
20 one that is not, provided the substituted medication is comparable  
21 to the medication prescribed by the contract physician.

22 (c) If an inmate is given a diagnosis and recommendation for  
23 treatment by a physician, no prison staff other than a physician  
24 may interfere with the delivery of that treatment.

25 (d) Any person who violates this section shall be subject to  
26 appropriate disciplinary action by the department. In addition, a  
27 violation of subdivision (b) is an infraction punishable by a fine of  
28 up to ~~\$1,000~~ *one thousand dollars (\$1,000)*. A second or  
29 subsequent violation of subdivision (b) is ~~a misdemeanor~~  
30 *punishable by a fine of up to two thousand dollars (\$2,000)*.

31 (e) Any action taken against a physician pursuant to this section  
32 shall be reported by the employing department to the Medical  
33 Board of California within 30 days of that action.

34 SEC. 2. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section 17556 of  
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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